

CHICAGO AND



TRANSPORTATION COMPANY

JOAN A. SCHRAMM
J.S. EDWARDS
FRANCES L. TURNER
ASSISTANT SECRETARIES
DIRECT DIAL NUMBER
312/454-6535

12931

RECORDATION NO. Filed 1425

February 12, 1981

FEB 17 1981 - 10 25 AM

File No. A-11474

INTERSTATE COMMERCE COMMISSION

No. 1-048A-54

Date FEB 17 1981

Fee \$ 50.00

ICC Washington, D. C.

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Ms. Mergenovich:

Pursuant to Section 11303 (formerly Section 20c) of the Interstate Commerce Act, enclosed for recordation are counterparts of Railroad Equipment Lease dated as of January 15, 1981 covering 110 enclosed Tri-level Auto Racks and 40 partly enclosed Tri-level Auto Racks.

The names and addresses of the parties to the transaction are as follows:

Chicago and North Western Transportation Company,
400 West Madison Street, Chicago, Illinois 60606,
Lessee, and ITT Industrial Credit Corporation,
1400 N. Central Life Tower, P.O. Box 43777, St. Paul,
MN 55164, Lessor

Enclosed is our check for \$50.00 to cover your recording fee.
Keep one counterpart for your files and return the other counter-
parts showing your recordation data.

Very truly yours,

J. S. Edwards
Assistant Secretary

JSE:lc
Enclosures

cc: G. R. Charles
R. D. Smith
F. E. Cunningham, Attn: R. DeWitt
R. F. Guenther, Attn: J. James
D. E. Stockham, Attn: P. J. Brod
T. E. Greenland

Arthur Andersen & Co.
Attn: G. Holdren

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FEE OPERATION BR.

Interstate Commerce Commission
Washington, D.C. 20423

2/17/81

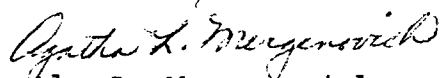
OFFICE OF THE SECRETARY

J.S. Edwards
Assistant Secretary
Chicago & North Western Transportation Co.
400 West Madison Street
Chicago, Illinois 60606

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/17/81 at 10:55pm, and assigned recordation number(s). 12931

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

12931

RECORDATION NO. _____ Filed 1225

RAILROAD EQUIPMENT LEASE

FFB 17 1981 -10 25 AM

LEASE OF RAILROAD EQUIPMENT dated as of January 15, 1981, between **CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY**, a Delaware corporation ("Lessee"), and **ITT INDUSTRIAL CREDIT COMPANY OF TENNESSEE**, a Tennessee corporation ("Lessor"),

INTERSTATE COMMERCE COMMISSION

WHEREAS, Lessee has entered into a purchase letter dated December 17, 1980 (the "Purchase Agreement") with Whitehead & Kales Company ("Vendor"), wherein Vendor has agreed to manufacture, sell and deliver to Lessee the units of railroad equipment described in Schedule 1 hereto (the "Equipment"); and

WHEREAS, Lessor is entering into a Purchase Letter Assignment dated as of the date hereof (the "Assignment") with Lessee and consented to by Vendor, whereby Lessee is assigning its rights to purchase the Equipment under the Purchase Agreement to Lessor and Vendor therein consents to such assignment; and

WHEREAS, Lessee desires to lease such number of units of the Equipment as are delivered, accepted and settled for under the Purchase Agreement and Assignment (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by Lessee, Lessor hereby leases the Units to Lessee upon the following terms and conditions:

§ 1. NET LEASE

This Lease is a net lease. Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, Lessee shall not be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against rent or such other amounts, including, but not limited to, counterclaims, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity; the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of the Lease. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by Lessee hereunder shall be final and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever, except as to the amount of any payment made by Lessee in excess of the amount required to be paid by Lessee pursuant to this Lease.

§ 2. DELIVERY AND ACCEPTANCE OF UNITS

Lessor hereby appoints Lessee its agent for inspection and acceptance of the Units pursuant to, and in accordance with, the Purchase Agreement and Assignment. Lessor will cause the Units to be delivered to Lessee at the point within the United States of America at which the Units are delivered to Lessor under the Purchase Agreement and Assignment. Upon such delivery, Lessee will cause an employee of Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and Lessee shall execute and deliver to Lessor a certificate of acceptance (the "Certificate of Acceptance") in the form of Exhibit A hereto, stating that such Unit has been inspected and accepted on behalf of Lessee and Lessor on the date of such

Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by Lessee and shall be subject thereafter to all the terms and conditions of the Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Purchase Agreement and Assignment shall be null and void and ineffective to subject such unit to this Lease.

§ 3. RENTALS

3.1. Amount and Date of Payment. Lessee agrees to pay to Lessor as rental for each Unit subject to this Lease one (1) interim and twenty (20) consecutive semiannual payments. The interim payment for each Unit subject to this Lease is payable on June 30, 1981, and shall be in an amount equal to the product of the Purchase Price (as set forth in the second paragraph of the Purchase Agreement, and as invoiced to, and paid by Lessor) for such Unit multiplied by .045530% for each day elapsed from and including the Closing Date, (as hereinafter defined) for such Unit up to and including, June 30, 1981. The twenty (20) semiannual payments are payable in arrears on June 30, and December 30, in each year, commencing December 30, 1981, to and including June 30, 1991, and each sum payment shall be in an amount equal to 8.1954% of the Purchase Price of the Units; provided, however, for each Unit delivered and accepted after June 30, 1981, the rentals thereafter payable by Lessee in respect of each such Unit shall be increased or decreased by such amount as shall, in the reasonable opinion of Lessor, cause Lessor's after-tax economic yield (computed on the same assumptions, and utilizing the same methods as were utilized by the Lessor in originally evaluating the transaction (unless otherwise provided) contemplated herein) to equal the after-tax economic yield that would have been realized by the Lessor if such Unit had been delivered and accepted prior to June 30, 1981.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 16 hereof.

If any change in Federal tax benefits as to any Unit(s) is legislated prior to delivery thereof, or is legislated with effect retroactive to delivery thereof, or if any change in Federal tax benefits as to any Unit(s) is made by change in income tax regulations, published administrative interpretations or decisions, or judicial decisions which are both published and effective prior to the delivery of the Unit(s), then the rental rate specified above for such Unit(s) (and the Casualty Value percentages set forth in the Schedule hereto) shall be increased or decreased as necessary so as to preserve Lessor's after tax rate of return at the same level as if such tax benefits had not been changed.

3.2. Payments on Nonbusiness Days. If any of the rental payment dates referred to in § 3.1 above is not a business day, the rental payment otherwise payable on such date shall be payable on the next preceding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, are authorized or obligated to remain closed.

§ 4. TERM OF LEASE

The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9, 11, 14, 16 and 17 hereof) and of Lessor under §§ 6, 7, 13 and 16 hereof, shall survive the expiration of the term of this Lease, unless otherwise discharged.

§ 5. IDENTIFICATION MARKS

Lessee (at its own expense) will cause each Unit to be kept numbered with the road number set forth in Schedule 1 hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "ITT INDUSTRIAL CREDIT COMPANY OF TENNESSEE, OWNER AND LESSOR", or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's title to and interest in such Unit and the rights of Lessor under this Lease. Lessee will not place any such Unit in operation or exercise any

control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Lessor and duly filed, recorded and deposited by Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) Lessee shall have furnished Lessor an opinion of counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by Lessee or its affiliates.

Except as provided in the preceding paragraph, Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. GENERAL TAX INDEMNIFICATION

All payments to be made by Lessee hereunder will be free of expense to Lessor for collection or other charges and will be free of expense to Lessor with respect to the amount of any local, state, Federal or foreign taxes (income, gross receipts, franchise, sales, use, property (real or personal, tangible or intangible) stamp and minimum (imposed under Section 56 of the Internal Revenue Code of 1954, as amended) taxes, or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by any Unit or this Lease or any manufacture, sale, rental, ownership, possession, use, payment, shipment, delivery, nondelivery, rejection, transfer of title, return or other disposition of the Equipment (other than a disposition by Lessor following return of any Unit in accordance with § 14 hereof), under the terms hereof (other than any Federal, state or local income tax and, to the extent that Lessor receives credit therefor against its Federal income tax liability, any foreign income tax, except as provided herein and other than taxes which are in substitution for or which relieve Lessor from the burden of Federal, state and local income taxes) and Lessee shall also indemnify Lessor for state and local income taxes and fees in excess of the amount of any such taxes which would be payable to the state and city in which Lessor has its principal place of business without apportionment to any other state, all of which impositions Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the receipts or earnings arising therefrom (except as provided above) or upon Lessor by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title or the interest of Lessor or result in a lien upon any such Unit; provided, however, that Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or Lessor is required to contest such impositions as provided in this § 6, and the nonpayment thereof does not, in the reasonable opinion of Lessor, adversely affect the title, property or rights of Lessor hereunder. Lessee agrees to give Lessor notice of such contest brought in Lessee's name within thirty (30) days after institution thereof and Lessor agrees to provide such information as may be reasonably requested by Lessee in furtherance of such contest.

If any impositions shall have been charged or levied against Lessor directly and paid by Lessor, Lessee shall pay Lessor on presentation of an invoice therefor, and Lessor agrees to give Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this § 6.

In the event any returns, statements or reports with respect to impositions involving any Unit are required to be made, Lessee will make such returns, statements and reports in such manner as to show the interest of Lessor in such Units as shall be satisfactory to Lessor or, where not so permitted, will notify Lessor of such requirement and will prepare and deliver such reports to Lessor within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to Lessor.

In the event that during the continuance of this Lease Lessee becomes liable for the payment or reimbursement of any imposition pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by Lessee.

If claim is made against Lessor for any impositions indemnified against under this § 6, Lessor shall promptly notify Lessee. If reasonably requested by Lessee in writing, Lessor shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and, at the expense of Lessee, contest in good faith the validity, applicability or amount of such impositions by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. Lessee may also contest, or cause to be contested, at its own expense, the validity, applicability or amount of such impositions in the name of Lessor, provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of Lessor in any such proceeding or action) without the prior written consent of Lessor, which consent shall not be unreasonably withheld. If Lessor shall obtain a refund of all or any part of such impositions previously reimbursed by Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by Lessee and the period of such payment, Lessor shall pay to Lessee the amount of such refund or interest net of expenses, but only if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

Lessee shall, whenever reasonably requested by Lessor, submit to Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to Lessor of Lessee's performance of its duties under this § 6. Lessee shall also furnish promptly upon request such data as Lessor reasonably may require to permit Lessor's compliance with the requirements of taxing jurisdictions.

The amount which Lessee shall be required to pay with respect to any imposition which is subject to indemnification under this § 6 shall be an amount sufficient to restore Lessor to the same net after-tax rate of return after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that Lessor would have been in had such imposition not been imposed.

§ 7. MAINTENANCE; CASUALTY OCCURRENCES; INSURANCE

7.1. Maintenance. Lessee at its own expense will maintain and service each Unit (including any parts installed or replacements made to any Unit and considered an Addition, as defined in § 9.2 hereof, hereunder) and will test, repair and overhaul each Unit so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, (c) eligible for railroad interchange in accordance with the interchange rules of the American Association of Railroads, and, (d) at least at a level of maintenance comparable to that used on all other owned or leased equipment in Lessee's fleet similar to the Units. Lessee agrees to keep records and logs that are customarily kept in the railroad industry for maintenance performed on the Units.

7.2. Definition of Casualty Occurrence; Payments. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government or any other governmental authority for a stated period which shall exceed the then remaining term of this Lease, or by any governmental entity resulting in loss of possession by Lessee for a period of 90 consecutive days during the term hereof (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, Lessee shall promptly and fully notify Lessor with respect thereto. On the rental payment date next succeeding such notice Lessee shall pay to Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as defined in § 7.3 hereof) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, or complete destruction of such Unit) Lessor shall be entitled to recover possession of such Unit and Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof.

7.3. Amount of Casualty Value. The "Casualty Value" of each Unit as of the payment date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Schedule 2 hereto opposite such date. Whenever any Unit shall suffer a Casualty Occurrence after

termination of this Lease at the expiration of the term hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, Lessee shall promptly and fully notify Lessor with respect thereto and pay to Lessor an amount equal to the Casualty Value of such Unit, which shall be 20% of the Purchase Price of such Unit. Upon the making of any such payment by Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), Lessor shall be entitled to recover possession of such Unit.

7.4. Lessee Agent for Disposal. Lessor hereby irrevocably appoints Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that Lessee has previously paid the Casualty Value to Lessor, Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to Lessor.

7.5. Requisition by United States Government. In the event of the requisition for use (which is not a Casualty Occurrence) by the United States Government or any political subdivision thereof (the "Government") of any Unit during the term of this Lease, all of Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, Lessee shall be obligated to return such Unit to Lessor pursuant to § 11 or § 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but Lessee shall in all other respects comply with the provisions of said § 11 or § 14, as the case may be, with respect to such Unit. All payments received by Lessor or Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; all payments received by Lessor or Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, Lessor.

7.6. No Release. Except as hereinabove in this § 7 provided, Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by Lessee hereunder.

7.7. Insurance To Be Maintained. Lessee will, at all times prior to the return of the Equipment to Lessor, at its own expense, cause to be carried and maintained property insurance and public liability insurance in respect of the Units at the time subject hereto, in amounts (subject to customary deductibles which is currently \$2.5 million per occurrence) and against risks customarily insured against by railroad companies in respect of similar equipment, and, in any event, at least comparable in amounts and against risks customarily insured against by Lessee in respect of similar equipment owned or leased by it. Any policies of public liability insurance carried in accordance with this paragraph shall name Lessor as an additional insured, ~~any policies of property insurance shall name Lessor as loss payee~~ as its interests may appear. The policy or verification shall provide that the Lessor receive at least thirty (30) days prior written notice of any changes proposed to be made to any such policies of insurance and of the expiration of any such policies of insurance, and Lessee shall deliver or cause to be delivered to Lessor evidence of such coverage, either by written verification, or certificate from Lessee's insurance broker, in a form satisfactory to Lessor, on the date of first delivery of the Unit(s) and on each anniversary thereof until expiration of the Lease term. If Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, Lessor shall, subject to Lessee's having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by Lessee and any balance of such proceeds or condemnation payments shall remain the property of Lessor. All insurance proceeds received by Lessor from Lessee's insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to Lessee upon proof satisfactory to Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

7.8. Economic Casualty. In the event Lessee shall in its reasonable judgment determine that the Units have become obsolete or shall be surplus to its requirements or a change in applicable law, as defined in § 9.2 hereof, makes it onerous to use the Units during the last 3 years of the term of this Lease, Lessee shall have the right at its option, on at least thirty (30) days prior written notice to Lessor to terminate this Lease as to the Units (subject to the provisions for the survival of indemnification obligations contained in §§ 6 and 9 hereof) as of the next scheduled rental payment date upon payment to Lessor of the economic casualty value of the Units as determined pursuant to the Economic Casualty Value Schedule of Schedule 3 hereof, and Lessee shall

then return the Units to Lessor, and the Units shall otherwise be treated as having suffered a Casualty Occurrence; provided, however, that Lessee shall not have such right of termination as to the Units as long as any Event of Default, or any event which with the passage of time or the giving of notice or both would constitute an Event of Default, has occurred and is continuing.

§ 8. REPORTS, INSPECTION & NOTIFICATION

On or before April 30 in each year, commencing with the calendar year 1982, Lessee will furnish to Lessor an accurate statement (i) setting forth as at the preceding December 31, if applicable, the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as Lessor may reasonably request, and (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced. Lessor shall have the right by its agents, to inspect the Units and Lessee's records with respect thereto at such reasonable times as Lessor may request during the continuance of this Lease.

§ 9. DISCLAIMER OF WARRANTIES; COMPLIANCE WITH LAWS & RULES; INDEMNIFICATION

9.1. Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO LESSEE HEREUNDER, AND LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO LESSEE OR OTHERWISE, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee but Lessor hereby irrevocably appoints and constitutes Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of Lessor and/or Lessee, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor may have against the Vendor; provided, however, that if at any time an Event of Default shall have occurred and be continuing, Lessor may assert and enforce, at Lessee's sole cost and expense, such claims and rights. Lessor shall have no responsibility or liability to Lessee or any other person with respect to any of the following: (1) Any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the ownership use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between Lessee and Lessor that the Units described therein are in all the foregoing respects satisfactory to Lessee, and Lessee will not assert any claim of any nature whatsoever against Lessor based on any of the foregoing matters.

9.2. Compliance with Laws and Rules. Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any powers or jurisdiction over the Units and with all other applicable interchange rules, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, Lessee will conform therewith at its own expense; provided, however, that Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of Lessor, adversely affect Lessor's title to the property or its rights under this Lease.

Lessee, without the consent of Lessor and at its own cost and expense, may furnish other additions, modifications and improvements (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the United States Department of Transportation, the Interstate Commerce Commission or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (collectively "Additions") to the Units as Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in Lessor in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such original Part; (ii) such Part is required to be incorporated in or installed as part of the Units pursuant to the provisions of § 7.1 hereof or the terms of the first sentence of this § 9.2; or (iii) such Part cannot be readily removed from the Unit to which it relates without causing material damage to the Unit. In all other cases, if no Event of Default or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in Lessee and may be removed by Lessee at any time during the term of this Lease and prior to the return of the Units to Lessor pursuant to § 14 hereof. The term "Part" for the purposes of this paragraph shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

9.3. Indemnification. Lessee agrees to indemnify, protect and hold harmless Lessor from and against all losses, damages, injuries, liabilities, claims (including, without limitation, claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof (other than any matter caused solely by Lessor's gross negligence) and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under this Lease, or any sublease entered into pursuant to § 12 hereunder, or the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect with respect to all events, facts, conditions or other circumstances occurring or existing prior to the expiration or termination of the term of this Lease and return of the Units as provided in § 14 of this Lease; provided, however, that the foregoing indemnification shall not be deemed to operate as a guarantee of the residual value of any Unit. The amount Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to Lessor sufficient to restore Lessor to the same position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had the liability or expense indemnified against not been incurred.

Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Units.

Lessee agrees to prepare and deliver to Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of Lessor) any and all reports (other than tax returns) to be filed by Lessor with any Federal, state or other regulatory authority by reason of the ownership by Lessor of the Units or the leasing thereof to Lessee.

§ 10. DEFAULT

10.1. Events of Default; Remedies. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) Default shall be made in payment of any amount provided for in § 3, § 6, § 7, § 13 or § 16 of this Lease, or default shall be made in payment of any other amount provided for in this Lease and such default shall continue for ten (10) days after written notice from Lessor to Lessee specifying the default and demanding that the same be remedied;

(B) Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of any of the Units, or any portion thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled and to recover possession of any such Unit(s) within fourteen (14) days after written notice from the Lessor to the Lessee demanding the same;

(C) a failure to maintain the insurance as required in Section 7.7 of this Lease;

(D) default shall be made in the observance or performance of any other of the other covenants, conditions and agreements on the part of Lessee contained herein and such default shall continue for twenty-five (25) days after written notice from Lessor to Lessee specifying the default and demanding that the same be remedied;

(E) any representation or warranty made by Lessee herein or in any other document or certificate furnished by Lessee in connection herewith or pursuant hereto shall at any time prove to have been incorrect in any material respect as of the date of issuance or making thereof, except for warranties or representations made to Lessor in § 16 hereof, provided that the indemnity payments required thereunder have been made by Lessee;

(F) Lessee shall either admit in writing its inability to pay its debt generally as they come due or not pay or not be able to pay its debts as they become due, unless such admission, inability or nonpayment shall be with the acquiescence of Lessee's creditors, or shall make a general assignment for the benefit of creditors;

(G) a petition for reorganization under Title 11 of the United States Code, as now constituted or as may hereafter be amended, shall be filed by or against Lessee, and unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed;

(H) any other proceedings shall be commenced by or against Lessee for any relief which includes, or might result in, any modification of the obligations of Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of Lessee hereunder, and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Lessee or for the property of Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced); or

(I) any representation or warranty made by Lessee in the Purchase Agreement Assignment shall at any time prove to have been incorrect in any material respect at the time made or Lessee shall fail to perform or observe any term, condition or agreement to be performed or observed by it under the Purchase Agreement (other than payment of the Purchase Price for the Units) or the Purchase Agreement Assignment.

Then, in any such case, Lessor, at its option, may:

(A) Proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(B) by notice in writing to Lessee terminate this Lease, whereupon all rights of Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as herein provided; and thereupon Lessee, if so requested by Lessor, shall at Lessee's expense, promptly return possession of such Units to Lessor in the condition required herein as if such Units were being returned upon expiration of the Lease term, or Lessor may by its agents or otherwise enter upon the premises of Lessee or other premises where any of the Units may be and take possession, without demand or notice and without court order or legal process, of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purposes whatsoever and without any duty to account to Lessee for such action or inaction or for any proceeds arising therefrom; Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rent period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee as liquidated damages for loss of the bargain and not as a penalty, (i) an amount equal to the excess, if any, of, at Lessor's sole discretion, either the Casualty Value as of the rental payment date on or next preceding the date of termination or the present value of all remaining rents due under this Lease, over the amount Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event Lessor shall have sold any Unit, Lessor, in lieu of collecting any amounts payable to Lessor by Lessee pursuant to the preceding clause of this part (b) with respect to such Unit, may, if it shall so elect, demand that Lessee pay Lessor and Lessee shall pay to Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of, at Lessor's option, either the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination or the present value of the remaining rent, over the net proceeds of such sale, and (ii) an amount which, after deduction of all taxes required to be paid by Lessor and in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority, shall, in the reasonable opinion of Lessor, cause Lessor's net after-tax yield and net after-tax earnings to be the same as such net after-tax yield and net after-tax earnings would have been had Lessee not defaulted hereunder. All such present values shall be determined on the basis of a ten percent (10%) per annum discount compounded semiannually from the respective dates upon which the rents would have been payable hereunder had this Lease not been terminated.

In addition, Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

10.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by Lessee or on its behalf.

10.3. Failure To Exercise Rights Is Not Waiver. The failure of Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. RETURN OF UNITS UPON DEFAULT

11.1. Return of Units. If this Lease shall terminate pursuant to § 10 hereof, Lessor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by Lessor, take or cause to be taken by its agent or agents, immediate possession of each of the Units, or one or more of the Units and may remove the same from possession and use of Lessee or any other person and for such purpose may enter upon the premises of Lessee or any other premises where the Units may be located and may use

and employ in connection with such removal any available trackage and other facilities or means of Lessee, subject to all mandatory requirements of due process of law.

If this Lease shall terminate pursuant to § 10 hereof, Lessee shall deliver to Lessor all logs, manuals, data and any other records required to be maintained with respect to the Units and shall forthwith deliver possession of the Units to Lessor. Each Unit so delivered shall (i) be in the same operating order, repair and condition as when originally delivered to Lessee, ordinary wear and tear and modifications, if any, permitted by this Lease excepted and (ii) meet standards then in effect under the interchange rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units to Lessor as above required, Lessee shall, at its own cost, expense and risk:

(A) Forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) and at the usual speed place such Units upon such storage tracks of Lessee or any of its affiliates as Lessor reasonably may designate;

(B) permit Lessor to store such Units on such tracks for up to 120 days at the risk of Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by Lessor; and

(C) transport the same to any place on the lines of railroad operated by Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Units. During any storage period, Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair and will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within sixty (60) days after such termination, Lessee shall, in addition, pay to Lessor for each day after such termination and up to the date such Units are so stored an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is the Penalty Rate (as defined in § 17 hereof) and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day, exceeds the actual earnings received by Lessor on such unit for each such day, if any; such payment shall not affect the obligation of Lessee to redeliver the Units pursuant to the first sentence of this paragraph.

11.2. Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of Lessee under the foregoing provisions of this § 11, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Unit to Lessor to demand and take possession of such Unit in the name and on behalf of Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. ASSIGNMENT; POSSESSION & USE

This Lease shall be assignable in whole or in part by Lessor without the consent of Lessee, but Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor. All the rights of Lessor hereunder (including, but not limited to, the rentals payable under this Lease) shall inure to the benefit of Lessor's assigns. Any such assignment or any security interest granted by Lessor in the Equipment shall be subject to Lessee's rights hereunder, including the right of quiet enjoyment.

So long as Lessee shall not be in default under this Lease and Lessee shall have fully complied with the provisions of the fourth paragraph of this § 12, Lessee shall be entitled to the possession and use of the Units and, without Lessor's consent, to sublease the Units to, or to permit their use by, a user incorporated in the United States

of America (or any state thereof or the District of Columbia), upon lines of railroads owned or operated by Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any state thereof or the District of Columbia), or over which Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term or terms that aggregate more than six (6) months; provided, further, that Lessee shall not use, sublease or permit the sublease or use of any Unit outside the United States of America, except occasional use permitted in Canada as long as such use does not involve regular operation and maintenance outside the United States of America; and provided, further, however, that any such sublease or use shall be consistent with the provision of § 16 hereof and that such sublease or use shall not adversely affect Lessor's rights and remedies under the Lease, or Lessor's title and interest in and to the Units. No such assignment or sublease shall relieve Lessee of its obligations hereunder which shall be and remain those of principal and not a surety.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be subject to the rights and remedies of Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder.

Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance resulting from claims against Lessor not related to the ownership or leasing of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of Lessor or Lessee therein; except that this covenant will not be breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent; and, furthermore, Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinion of Lessor, adversely affect the title, property or rights of Lessor hereunder.

Nothing in this § 12 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any Class I railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of Lessee hereunder pursuant to appropriate instruments satisfactory in form and substance to Lessor and its respective counsel) into or with which Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of Lessee; provided, however, that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition be in default under any provision of this Lease and that such acquisition or lease of railroad lines of Lessee shall not alter in any way Lessee's obligation to Lessor hereunder which shall be and remain those of a principal and not a surety.

§ 13. PURCHASE OPTION

Provided that this Lease has not been earlier terminated and Lessee is not in default hereunder, Lessee may, by written notice delivered to Lessor not less than six (6) months prior to the end of the original term of this Lease, elect to purchase all but not less than all of the Units then covered by this Lease, at the expiration of the Lease term, at the then Fair Market Sales Value of such Units, as hereinafter defined.

Upon purchase of the Units by Lessee, Lessor shall, upon request of Lessee execute and deliver to Lessee or to Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interest and other encumbrances by or in favor of any person claiming by, through or under Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to Lessee or such assignee or nominee, in such forms as may reasonably be requested by Lessee, all at Lessee's expense.

Fair Market Sales Value shall be determined on the basis of, and shall be equal in amount to, the sales value which would be obtained in an arm's-length transaction between an informed and willing purchaser (other than a purchaser currently in possession), and an informed and willing seller under no compulsion to sell, and, in such determination, costs of removal from the location of current use shall not be a deduction from such Fair Market Sales Value but there shall be excluded any value attributable to additions, modifications and improvements which Lessee is entitled to remove pursuant to § 9 hereof.

If after forty-five (45) days from the giving of notice by Lessee of Lessee's election to purchase the Units as provided in the first paragraph of this § 13, Lessor and Lessee are unable to agree upon a determination of Fair Market Sales Value, the Fair Market Sales Value shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of Fair market Sales Value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within twenty (20) business days after such notice is given, each party shall appoint an independent appraiser within twenty-five (25) business days after such notice is given, and the two appraisers so appointed shall within thirty-five (35) business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within thirty-five (35) business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by an appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Sale Value, within ninety (90) days after his/her or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Sales Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by Lessee and Lessor.

§ 14. RETURN OF UNITS UPON EXPIRATION OF LEASE TERM

As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit which Lessee does not purchase pursuant to § 13, Lessee will, at its own cost and expense, at the request of Lessor, deliver possession of such Unit to Lessor upon such storage tracks on the lines of Lessee as mutually agreed to by Lessor and Lessee and as Lessor may designate, or in the absence of Lessor's designation, on such lines of Lessee as Lessee may designate, and permit Lessor to store such Unit on such tracks for a period not exceeding two (2) months and transport the same, at any time within such two (2) month period, to any reasonable place on the lines of railroad operated by Lessee, or to any connecting carrier for shipment, all as directed by Lessor and as mutually agreed to by Lessor and Lessee, the movement to storage, any movement to a connecting carrier, and the storage of such Units to be at the expense and risk of Lessee. During any such storage period Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided that, Lessee shall not be liable, except in the case of negligence, strict liability or willful misconduct of the Lessee, its agents or employs for any injury to or death of any person exercising, on behalf of either the Lessor or a prospective purchaser, lessee or user such rights of inspection. Each Unit returned to Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to Lessee, ordinary wear and tear excepted, and (ii) except for additions, modifications and improvements which Lessee is entitled to remove under the provisions of § 9 of this Lease, meet all operating standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction. Anything to the contrary contained in this § 14 notwithstanding and provided no Event of Default or event which with time or notice or both would constitute an Event of Default has occurred and is continuing, Lessee shall have no obligation under clauses (b), (c) or (d) in § 7.1 herein after the expiration of the lease term. Lessee shall also forthwith deliver to Lessor all logs, manuals, data and other records required to be maintained under § 7.1 hereof with respect to the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within sixty (60) days after such termination, Lessee shall, in addition, pay to Lessor for each day after such termination a sum equal to the amount, if any, by which the product of (i) a fraction the numerator of which is the Penalty Rate (as defined in § 17 hereof) and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by Lessor on such Unit for each such day, if any.

§ 15. RECORDING

Lessee, at its own expense, will cause this Lease and any assignment hereof, if applicable, to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required or requested by Lessor) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to its satisfaction, of Lessor's interest in the Units, or for the purpose of carrying out the intention of this Lease, and Lessee will promptly furnish to Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor. This Lease shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

§ 16. INCOME TAX INDEMNIFICATION

16.1. Tax Assumptions. It is the intent of the parties to this Lease that it will be recognized as a lease for all Federal, state, city and local income taxes or franchise taxes imposed on or measured by net income, and that this Lease does not convey to Lessee any right, title or interest in the Units except as Lessee and other than Lessee's right to purchase the Units at Fair Market Sales Value in accordance with § 13 hereof. In accordance with that intent, this Lease has been entered into on the assumptions (the "Tax Assumptions") that for United States income tax purposes (and to the extent applicable for state, city and local tax purposes):

(A) Lessor will be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), to an owner of property, including, without limitation:

(1) The maximum depreciation deduction with respect to the Units authorized under Section 167 of the Code (a) utilizing a ten (10) year depreciable life, (b) employing initially the 200% declining balance method of depreciation with a change, to the sum-of-the-years-digits method of depreciation when most beneficial to Lessor, as permitted by the Code and regulations at the time Lessor becomes the owner of each Unit, (c) including in the basis of the Units the entire Purchase Price thereof as evidenced on the invoice to Lessor therefor and (d) depreciating to a net salvage value of ten percent (10%) after taking into account the ten percent (10%) reduction of salvage value permitted by Section 167(f) of the Code;

(2) The ten percent (10%) investment credit with respect to 100% of the Purchase Price of the Units (the "Investment Credit"), pursuant to Section 38 and related sections of the Code; and

(B) Each Unit of Equipment will have a fair market value at the end of the original term of this Lease (such fair market value being determined without including in such value any increase or decrease for inflation or deflation during such original Lease term and determined after subtracting from such value the cost, if any, for removal and delivery of possession to Lessor at the end of such term) equal to at least twenty percent (20%) of the original cost for such Unit, and each Unit is estimated to have a remaining useful life at the end of the original term of this Lease equal to at least twenty percent (20%) of its originally estimated useful life.

16.2. Lessee's Representations & Agreements.

(A) Lessee represents, that: (i) at the time Lessor becomes the owner of each Unit, such Unit will constitute property the entire Purchase Price of which qualifies for the ten percent (10%) Investment Credit under Sections 38, 46, 48 and 50 of the Code; (ii) at the time Lessor becomes the owner of each Unit, such Unit will constitute "new Section 38 property", within the meaning of Sections 46 and 48 of the Code, of Lessor, and will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) Lessee will not at any time during the term of this Lease use or fail to use any Unit in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48(a) of the Code or as property eligible for accelerated depreciation; and (iv) Lessee will maintain sufficient records to verify such use, which records will be furnished to Lessor within thirty (30) days after receipt of a written demand therefor;

(B) Lessee agrees that neither it nor any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will at any time take any action (other than any action required by the terms of this Lease) or file any tax returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by Lessor over the amount specified to be payable under this Lease on the dates due hereunder except as specifically provided in this Lease, and that each of such corporations will file such returns, take such action, and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying upon demand by Lessor such records as will enable Lessor to determine the extent to which they are entitled to the full benefit of the accelerated method of depreciation and the Investment Credit with respect to the Units.

16.3. Lessee's Indemnities.

(A) Lessee's indemnification of Lessor hereunder will allow Lessor to have the same Net Return (as defined below) as if the condition indemnified against had not existed. If (except as a result of the occurrence of any Excluded Event set forth below) the Lessor shall suffer a disallowance of or shall be required to recapture or shall not have or shall lose the right to claim (any such event being hereinafter called a "Loss"), all or any portion of the Investment Credit or ~~the most~~ accelerated method of depreciation (a "Benefit") with respect to all or part of any Unit due to:

(i) The inaccuracy of any statement in any letter or document furnished to Lessor by Lessee (or any officer thereof);

(ii) any misrepresentation of Lessee contained in or made in connection with this Lease;

(iii) the use of any Unit by Lessee in such a way as to disqualify it as Section 38 property within the meaning of Section 48(a) of the Code or as property eligible for the most accelerated method of depreciation; or

(iv) any action or omission by Lessee, except any actions or omissions required by the terms of this Lease;

then in any such case of Loss of Benefit, subject to the provisions of § 16.3(C) and (D) hereof dealing with contesting a disallowance or recapture of a Tax Benefit, at Lessee's option (unless an Event of Default shall have occurred on the Lease has otherwise terminated) either a lump sum payment to Lessor shall be made by the Lessee or the rental rate applicable to such Unit set forth in § 3 of this Lease shall, on and after the next succeeding rental date after payment of the tax attributable to any Loss of Benefit under provisions of this paragraph, be increased, by, an amount for such Unit which in the reasonable opinion of Lessor, after due consultation with Lessee, will preserve for Lessor the after-tax rate of return (the "Net Return") that would have been realized by Lessor if such Loss had not occurred in respect of such Unit under this Lease; provided, however, that such Net Return shall be determined on the basis that Lessor would have been treated as the owner of such Unit and entitled to such deductions, credits and other benefits as are provided by tax law (including IRS Regulations and tax rules) in effect from time to time during the term of this Lease to a nonrailroad corporate owner of property, and subsequent rentals shall be appropriately adjusted (reductions being limited by and subject to the provision contained in § 3.1 hereof) for any change in Federal tax rates affecting such net rate of return, as of the effective date of such change. Lessee shall forthwith pay to Lessor the amount of any interest and penalty which may be assessed by the United States (or, where applicable, by any state or local taxing jurisdiction) against Lessor attributable to the Loss.

Lessee's option to pay by either lump sum or increased rentals shall be exercisable by written notice to Lessor within 30 days from the date that Lessee receives written notice from Lessor that an indemnity payment is due under the terms of this Lease. All indemnity payments hereunder shall be calculated based on the tax rates and benefits in effect from time to time and otherwise based on the same method of computation used in the calculation of the rentals contained in this Lease, provided that such indemnity payments shall not result in a Net Return more or less than that contemplated by Lessor in originally evaluating this transaction.

(B) Notwithstanding the provisions of § 16.3(a) hereof, there shall be no increase made in rentals nor shall any payment be required to be made by Lessee if Lessor shall have suffered such Loss with respect to all or part of such Unit(s) as a result of the occurrence of any of the following events ("Excluded Events"):

(i) a Casualty Occurrence with respect to such Unit, if Lessee shall have paid to Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer or other voluntary disposition by Lessor or any transfer or disposition by Lessor resulting from bankruptcy or other proceedings for relief of debtors in which Lessor is the debtor, whether voluntary or involuntary, of its ownership interest in such Unit provided that an Event of Default shall not have occurred;

(iii) the failure of Lessor to claim in a timely and proper manner (including all appropriate elections) in its Federal income tax return the Investment Credit or depreciation deduction unless Lessor shall have been advised by independent tax counsel chosen after due consultation with Lessee that claiming such Investment Credit or deduction would be unlawful;

(iv) the failure of Lessor to have sufficient liability for Federal income tax against which to credit such Investment Credit or sufficient income to benefit from the depreciation deduction, as applicable;

(v) any change in Federal tax benefits as to any Unit(s) legislated after delivery thereof or legislated with effect after delivery thereof, or any change in Federal tax benefits as to any Units made by change in income tax regulations, published administrative interpretations or decisions or judicial decisions which are both published and effective after delivery of the Unit(s);

(vi) the failure of Lessor to timely contest a claim as required under this Lease unless Lessor shall have been advised by independent tax counsel chosen after due consultation with Lessee that there is no reasonable basis for contesting such claim;

(vii) any participation in the residual value of any Unit at the expiration of the original term of this Lease by any party other than Lessor; or

(viii) any change in the corporate status of Lessor, including its status under Section 465(a)(1) of the Code.

(C) Lessor shall promptly, upon its knowledge thereof, give written notice to Lessee of any claim or proceeding in respect of which Lessee would be required to make indemnification payments under the provisions of this § 16 (including § 16.4 hereof). Lessor agrees that if, in the opinion of independent tax counsel selected by Lessor and approved by Lessee, such approval not to be unreasonably withheld ("Counsel"), a reasonable basis to contest the disallowance or recapture of all or a portion of the Benefits described above with respect to any Unit exists in respect of which Lessee would be required to make indemnification payments under the provisions of this § 16 to Lessor pursuant hereto, Lessor shall, upon written request and at the expense of Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to contest such claim, and if Lessor fails to contest, Lessee will not be required to indemnify Lessor for the Loss of Benefits as set forth in § 16.3(a) hereof; provided, however, that Lessor shall not be obligated to take any such legal or other appropriate action unless Lessee shall first have indemnified Lessor for all expenses which may be entailed therein. If within thirty (30) days after notice from Lessor Lessee does not request that Lessor contest the disallowance or recapture of the Benefits or in the opinion of Counsel no reasonable basis to contest such matter exists, then Lessee shall have no further right to contest.

(D) In the event Lessee requests that Lessor contest the disallowance or recapture of the Benefits and in the opinion of Counsel a reasonable basis to contest such

matter exists, then Lessor shall either take such action to contest the disallowance or recapture prior to making payment of any tax and interest and/or penalty attributable to the disallowance or recapture with respect to Lessor of all or any portion of the Benefits with respect to any Unit or shall make such tax payment (the "Tax Payment") and thereafter seek a refund. If Lessor contests prior to making such Tax Payment, such indemnification payable hereunder need not be paid by Lessee while such action is pending. In such case, if the Final Determination (as hereinafter defined) shall be adverse to Lessor, the indemnification payable hereunder shall be computed by Lessor as of the date of such Final Determination and Lessee shall commence payment of indemnities on the date and in the manner and to the extent provided in § 16.3(a) hereof, and on or before such payment date, Lessee shall pay to Lessor as an additional payment thereunder an amount equal to all interest and penalty paid by Lessor in respect of such Final Determination together with an amount sufficient to maintain Lessor's Net Return. If Lessor elects to make such Tax Payment prior to contesting the matter, such indemnification payable hereunder is to commence immediately in the manner and to the extent provided in § 16.3(a) hereof, and such payments by Lessee due on and after the date of such Tax Payment shall be calculated on a basis so as to maintain Lessor's Net Return, and on or before such Tax Payment is due, Lessee shall pay to Lessor as an additional payment hereunder an amount equal to all interest and penalty paid by Lessor included in such Tax Payment. If Lessor seeks a refund after making such Tax Payment and the Final Determination shall be in favor of Lessor, Lessor shall forthwith upon receipt of refund of amounts previously paid, pay to Lessee an amount consisting of the aggregate of the following: (1) the amount of the increase in rental payments or lump sum payment, as the case may be, which, under the Final Determination, would not have been payable by Lessee to Lessor pursuant to § 16.3(a) hereof; and (2) the amount of interest and/or penalty paid or repaid to Lessor by the taxing jurisdiction. In addition, the rentals for the Units shall, if applicable, beginning with the next rental payment due, and after receipt by Lessor of such refund, be decreased to such amount or amounts as shall, in the reasonable opinion of Lessor, cause Lessor's Net Return to equal the net return that would have been realized by Lessor if additional income taxes of Lessor in the amount refunded had not been paid. Lessee agrees to pay to Lessor on demand any reasonable expense incurred by Lessor in connection with such contest. For purposes of this § 16 "Final Determination" is defined as a final decision or opinion of a court of competent jurisdiction which, in the opinion of Counsel and after taking into consideration the liabilities created thereby, presents no reasonable basis on which to appeal.

(E) Lessee's and Lessor's agreements and obligations to pay any sums which may become payable pursuant to this § 16 shall survive the expiration or termination of this Lease. For purposes of this § 16, the term "Lessor" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which Lessor is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(F) In the event the rental rates shall be increased (or decreased) as hereinbefore provided, the Casualty Values set forth in subparagraph (b) of § 10.1 hereof shall be adjusted accordingly.

16.4. Alterations, Modifications and Improvements. (A) In the event and to the extent that Lessor is required to include in its gross income for Federal income tax purposes the value of any addition, modification or improvement to the Units made by Lessee, under and pursuant to the terms of this Lease or otherwise (all such additions, modifications or improvements described in this sentence being hereinafter called "Alterations"), Lessee shall pay to Lessor on each of the dates provided in this Lease for payment of the installments of rental hereunder commencing with the first such date following the date on which Lessee is required to furnish written notice of such inclusion to Lessor pursuant to the following paragraph such additional rentals which, after deduction of all taxes required to be paid by Lessor on the receipt thereof under the laws of the United States of America or any political subdivision thereof and after taking into account any present or future tax benefits that Lessor reasonably anticipates it will derive from its additional investment in the Equipment (including, without limitation, any available current deduction, current and future depreciation deductions and investment tax credit), when taken together with the amount of any rental installments due on such dates under this Lease (but with appropriate adjustment on any such date for any such rental installment which for any reason shall not in fact be paid by Lessee), will, in the reasonable opinion of Lessor, cause Lessor's Net Return to equal the Net Return that would have been realized by Lessor if the value of any such Alteration had not been includible in Lessor's gross income. The Casualty Values payable with respect to the Units shall be adjusted in amounts calculated in a similar such manner by Lessor. The foregoing provisions are subject to Lessee's contest rights set forth in subparagraphs (C) and (D) of § 16.3.

(B) Lessee agrees that, within thirty (30) days after the close of any calendar year in which Lessee has made Alterations which are includible in the gross income of Lessor for Federal income tax purposes under this § 16.4, Lessee will give written notice thereof to Lessor describing such Alterations in reasonable detail and specifying the value thereof with respect to the Units.

§ 17. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of Lessee promptly to pay, to the extent legally enforceable, interest at a rate per annum (the "Penalty Rate") equal to the higher of (i) 15% or (ii) 3% above the "prime rate" of the Chase Manhattan Bank, National Association, in effect from time to time, on the overdue rentals and other obligations for the period of time during which they are overdue or, if such rate(s) are not legally enforceable, such maximum lesser amount as may be legally enforceable.

§ 18. LESSEE'S REPRESENTATIONS

18.1. Representations of Lessee & Lessor.

Lessee and Lessor each represent and agree that:

(A) It has the full power, authority and legal right to enter into and perform this Lease and the execution, delivery and performance of this Lease have been duly authorized by all necessary corporate or other legal action on its part, as applicable, will not require any stockholder approval or approval or consent of any trustee or holders of any of its indebtedness or obligations, and will not contravene or be inconsistent with any law, governmental rule regulation or order binding on it (or its Certificate of Incorporation or By-Laws) or contravene the provisions of, or constitute a default under, or result in the creation of any lien or encumbrance upon its property or under any indenture, mortgage, contract or other agreement to which it or any subsidiary or affiliate is a party, or by which any of them may be bound or affected;

(B) this Lease constitutes a legal, valid and binding obligation on its part enforceable against it in accordance with the terms hereof; and

(C) it has filed all foreign, Federal, state and local tax returns which (to its knowledge) are required to be filed, and has paid or made provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith and which in the aggregate do not involve material amounts.

18.2. Representations of Lessee.

Lessee represents and agrees that:

(A) All consents and approvals of, the giving of notice to, registration with, and the taking of any action in respect of any Federal, state or foreign governmental authority, necessary, if at all, to permit the transactions contemplated by this Lease have been taken;

(B) except as stated in Lessee's Annual Report or Form 10K for the fiscal year ended December 31, 1979, (the "1979 10K") or the memorandum for Investors dated December 15, 1980 (the "Memorandum"), there are no pending or threatened actions or proceedings before any court or administrative agency which will materially adversely affect the condition, business or operations of Lessee or any of its subsidiaries or affiliates or the ability of Lessee to perform its obligations under this Lease;

(C) Lessee has furnished to Lessor (i) Lessee's annual report to its shareholders for 1979, which includes consolidated balance sheets of Lessee as of December 31, 1979, and its consolidated balance sheet as of September 30 1980, related consolidated statements of income, changes in financial position and retained income, (ii) a consolidated balance sheet as of December 31, 1979, and September 30, 1980, together with the related consolidated statements of income and retained income for such periods and (iii) the 1979 10K and the Memorandum. Such consolidated financial statements are in accordance with the books and records of Lessee and have been prepared in accordance with generally accepted accounting principles. These principles have been applied on a consistent basis throughout the periods covered thereby. The financial statements present fairly the financial condition of Lessee at such dates and the results

of its operations for such periods. There has not been any material adverse change in the condition, financial or otherwise, of Lessee since September 30, 1980;

(D) Lessee is not in default in the payment of principal of or interest on any indebtedness for borrowed money or in default under any instruments or agreements under or subject to which any indebtedness for borrowed money has been issued or in default under any long-term rental obligation under which Lessee is the lessee, and no event has occurred and is continuing under the provisions of any such instrument or agreement which, with the lapse of time or the giving of notice or both, would constitute an event of default thereunder, other than defaults which would not have a material adverse effect on the Lessee's ability to perform its obligations under this Lease;

(E) prior to the delivery and acceptance of any Unit of Equipment under the Lease, the Lease will have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and, within twenty-one (21) days from the execution thereof, deposited with the Registrar General of Canada (and provision made for publication of notice of such deposit in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada;

(F) the Equipment will be used in interstate commerce;

(G) Lessee has all patents, patent rights, licenses, trademarks, trademark rights, trade names, trade name rights and copyrights which Lessee considers necessary to the conduct of its business as presently operated, or proposed to be operated; and

(H) no authorization or approval from the Interstate Commerce Commission or any other Federal, state or local governmental body or authority will be required to be obtained by virtue of the transaction contemplated in this Lease.

18.3. Opinions of Counsel.

(A) Lessee shall provide Lessor with an opinion of counsel acceptable to Lessor's reasonable satisfaction, with respect to § 18.1 (A) and (B) and § 18.2 (A), (B), (E), and (H), and such other matters as Lessor shall reasonably request, except that as to § 18.2 (A) and (B), Lessee's opinion of counsel shall be qualified to the best knowledge of such counsel.

(B) Lessor shall provide Lessee with an opinion of counsel, acceptable to Lessee's reasonable satisfaction, with respect to § 18.1 (A) and (B) and such other matters as Lessee shall reasonably request; such opinion shall be qualified as to be to the best knowledge of such counsel and shall rely on Lessee's opinion of counsel as to any applicable laws and the effectiveness of the Lease in the State of Illinois.

§ 19. CONDITIONS OF LESSOR'S OBLIGATIONS

The obligations of Lessor to accept each Unit from the Vendor and to lease the Units to Lessee are subject to the fulfillment to the reasonable satisfaction of Lessor, on or prior to the date of delivery and acceptance by the Lessee of the first Unit (unless otherwise stated) of the following conditions:

(A) The following documents shall have been duly authorized, executed and delivered to Lessor by the respective party or parties thereto, and shall be in full force and effect:

(i) The Purchase Agreement and Assignment;

(ii) this Lease;

(iii) an incumbency certificate of the Lessee as to the person or persons authorized to execute and deliver this Lease, the Purchase Agreement, the Assignment, the Certificate of Acceptance and any other documents to be executed on behalf of the Lessee in connection with the transactions contemplated hereby;

(iv) Lessee's independent insurance broker's verification or certificate and other evidence, in form and substance reasonably satisfactory to Lessor as to the due compliance with the terms of § 7.7 of the Lease;

(v) a report prepared by Lessee's Vice President - Car in form and substance satisfactory to Lessor which states that, as of a recent date, the estimated fair market value of the Units at the end of the Lease term (determined (a) without including in such value any increase or decrease for inflation or deflation during the

Lease term and (b) after subtracting from such value the cost, if any, to Lessor for removal and delivery of possession of the Units to Lessor at the end of the Lease term) will be at least equal to twenty percent (20%) of Lessor's Cost, and the estimated useful life of the Units will be at least one hundred twenty-five percent (125%) of the Lease term.

(vi) Lessee's financial statements for the period ended September 30, 1980, it being a condition of Lessor's obligations that there have been no material change in these financial statements from the preliminary statements provided Lessor on September 30, 1980;

(vii) releases executed by any party holding a lien on or security interest in the Units or any part thereof, if any; and

(viii) opinions of counsel for Lessee as to the matters set forth in Section 18.3.

(B) There shall have been no material adverse change in the financial condition of Lessee prior to the date of delivery and acceptance of such Unit by the Lessee from that shown on any preliminary or audited financial statements delivered to Lessor.

(C) A Uniform Commercial Code precautionary financing statement or statements covering the Units and any associated equipment shall have been executed and delivered by Lessee, as lessee, and by Lessor, as lessor, and such financing statement or statements shall have been duly filed in all place, and all other actions shall have been taken, which, in the opinion of Lessor are necessary to protect its ownership interest in the Units. This Lease has been filed with the Interstate Commerce Commission pursuant to U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of Lessor therein in any state of the United States of America or the District of Columbia.

(D) On the date of delivery of each Unit the following statements shall be true, and Lessor shall have received evidence reasonably satisfactory to it to the effect that:

(i) Lessor has good and marketable title to the Units, free and clear of all liens and encumbrances;

(ii) the representations and warranties of the Lessee contained in Section 18 hereof shall be true and accurate on and as of the date of delivery of such Unit as though made on and as of such date;

(iii) nothing shall have occurred which will materially and adversely affect the ability of Lessee to carry on its business and to perform its obligations under this Lease; and

(iv) no event shall have occurred and be continuing, or would result from the purchase or lease of the Units, which constitutes an Event of Default hereunder or would constitute an Event of Default hereunder but for the requirement that notice be given or time elapse or both.

(E) The obligation of the Lessor to pay for the Units is subject to receipt by the Lessor, on or before the date of payment to the Vendor for the Units (the "Closing Date") of the following documents which shall have been duly authorized and executed by the respective party or parties thereto, and shall be in full force and effect:

(i) the Certificate of Acceptance in the form of Exhibit A hereto, dated the date of delivery for the Unit(s);

(ii) a Bill of Sale for the Units on such form as may be satisfactory to Lessor executed by the Vendor in favor of Lessor and dated the Closing Date;

(iii) an invoice from the Vendor to Lessor in form and substance reasonably satisfactory to Lessor, specifying the Purchase Price for the Units payable to the Vendor;

(iv) an opinion of counsel for Vendor as to title to the Units, in form acceptable to Lessee's and Lessor's reasonable satisfaction.

§ 20. FINANCIAL REPORTS

Lessee will deliver to Lessor: (i) As soon as available and in any event within ninety (90) days after the end of each fiscal year, a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of Lessee stating that a review of the activities of Lessee during such year has been made under his supervision with a view to determining whether Lessee has kept, observed, performed and fulfilled all its obligations under this Lease and that to the best of his knowledge Lessee during such year has kept, observed, performed and fulfilled each and every covenant, obligation and condition contained therein, or if any Event of Default shall exist or if an event has occurred and is continuing which, with the giving of notice or the passage of time or both, would constitute an Event of Default, specifying such Event of Default and all such events and the nature and status thereof; (ii) as soon as available and in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each year, copies of the consolidated balance sheet of Lessee as of the end of such quarterly accounting period and copies of the related consolidated statements of income, retained income and changes in financial position of Lessee for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail, certified by the Controller or chief financial officer of Lessee, and stating in comparative form and figures for the corresponding date and period in the previous fiscal year; (iii) as soon as available, and in any event within ninety (90) days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year, of the consolidated balance sheet of Lessee as at the end of such fiscal year, and of the related consolidated statements of income, retained income and changes in financial position of Lessee for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and certified by Lessee's independent public accountants; and (iv) as soon as available, a copy of (A) each Annual Report and each report relating to the Equipment submitted to the Interstate Commerce Commission, each report on Form 10-K, Form 10-Q and form 8-K and each registration statement filed with the Securities and Exchange Commission (or any successor agencies to such Commissions) which are required to be filed by Lessee and (B) each proxy statement, financial statement and report that Lessee's ends or makes generally available to any of its security holders. All financial statements delivered pursuant to this Section 20 shall be prepared in accordance with generally accepted accounting principles consistently applied.

§ 21. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered, telexed or mailed first class, postage prepaid, address as follows:

(A) If to Lessor, to ITT Industrial Credit Company, P.O. Box 43777, 1400 North Central Life Tower, St. Paul, Minnesota 55164, Attention of Vice President - Director of Leasing; and

(B) If to Lessee, to Chicago and North Western Transportation Company, at 400 West Madison Street, Chicago, Illinois 60606, Attention of Assistant Vice President - Finance.

§ 22. MISCELLANEOUS

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or enforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for Lessor and Lessee. Nothing in this Lease shall be deemed to create any right in any person not a party hereto, and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

If Lessee fails to perform or comply with any of its agreements contained herein, Lessor may, upon notice to Lessee, itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of Lessor incurred in connection with such performance or compliance, together with interest on such amount at the Penalty Rate (as defined in § 17 hereof) (or such lesser amount as may be legally

enforceable) shall be payable by Lessee upon demand. No such performance or compliance by Lessor shall be deemed a waiver of the rights and remedies of Lessor against Lessee hereunder. Wherever the context permits, Lessee's representations, warranties and covenants hereunder shall survive the delivery and return of the Units leased hereunder.

§ 23. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to Lessor shall be deemed to be the original and marked as such and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 24. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

§ 25. DEFINITIONS

Whenever the term "Lessor" is used in this Lease, it shall include Lessor and any assignees of Lessor and, where the context so requires (including but not limited to certain of the provisions of § 16 hereof), shall, except for purposes of any assignment of "Lessor's" rights under this Lease, refer only to Lessor or such assignees of Lessor.

§ 26. EXPENSES

Lessee shall be responsible for any filing and registration fees associated with recording the Lease and titling the Units, for any fees and expenses incurred by Lessor in protecting Lessor's ownership interest in the Units or obtaining any regulatory approvals, and for any legal expenses and fees associated with any expert opinions required hereby that Lessee may incur or for which it is obligated to incur under the Lease.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

(Corporate Seal)

Attest:

(Corporate Seal)

Attest:

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

By:

[Signature]
Vice President-Finance & Accounting

ITT INDUSTRIAL CREDIT COMPANY

By:

[Signature]
Vice President

SS:

Margaret Hanson
Notary Public

My Commission expires

SS:

S. J. Stareika
Notary Public

My Commission expires



SCHEDULE 1

Date of Delivery: February - June, 1981

Place of Delivery: Detroit, Michigan

LESSEE'S IDENTIFICATION NUMBERS (both inclusive and two serial numbers on each)		PURCHASE PRICE FOR EACH UNIT
TYPE	MODEL	

A)	Enclosed tri-level auto racks with roof and extended height radial end doors	AB-15153-GCNX	110	72695-72914	\$39,096.00
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B)	Partly enclosed tri-level auto racks without roof	AB-15154-GLCN	40	72915-72994	\$36,833.00
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SCHEDULE 2

CASUALTY VALUE SCHEDULE

With respect to each Unit of Equipment, the Casualty Value shall equal the Purchase Price of such Unit of Equipment, multiplied by the percentage shown below as of the rental payment date next succeeding from the casualty occurrence.

<u>RENTAL PAYMENT DATE</u>	<u>PERCENT</u>
June 30, 1981	108.77143
December 31, 1981	109.32326
June 30, 1982	109.16367
December 31, 1982	108.72749
June 30, 1983	107.64711
December 31, 1983	106.31114
June 30, 1984	97.76870
December 31, 1984	95.61364
June 30, 1985	92.93462
December 31, 1985	90.01188
June 30, 1986	79.93637
December 31, 1986	76.27726
June 30, 1987	72.15848
December 31, 1987	67.77577
June 30, 1988	56.30383
December 31, 1988	51.19507
June 30, 1989	45.65238
December 31, 1989	39.79920
June 30, 1990	33.51412
December 31, 1990	26.88603
June 30, 1991	20.00000

Lessee acknowledges receipt of copy hereof.

Lessee

Chicago & North Western Transportation Company

By: *J. M. Butte*

Title: *Senior Vice President*
Finance & Accounting

SCHEDULE 3

ECONOMIC CASUALTY VALUE SCHEDULE

With respect to the Units of Equipment, the Economic Casualty Value shall equal the Purchase Price of such Units multiplied by the percentage shown below as of the rental payment date next succeeding the notice to terminate the Lease, as provided in § 7.8.

<u>RENTAL PAYMENT DATE</u>	<u>PERCENTAGE</u>
December 31, 1988	47.06836
June 30, 1989	41.37444
December 31, 1989	35.36447
June 30, 1990	28.91688
December 31, 1990	22.12031
June 30, 1991	15.00000

Lessee acknowledges receipt of copy hereof.

Lessee

Chicago & North Western Transportation Company

By: *J. M. Butte*

Title: *Senior Vice President.*
Finance & Accounting

EXHIBIT A
to Railroad Equipment Lease
CERTIFICATE OF ACCEPTANCE NO. _____
under

RAILROAD EQUIPMENT LEASE dated as of January 15, 1981, (the Lease) between ITT INDUSTRIAL CREDIT COMPANY OF TENNESSEE, as lessor (the Lessor), and CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY, as lessee (the Lessee).

1. Units of Equipment

The Lessee hereby certifies that the Units of Equipment set forth and described in Schedule 1 hereto (the "Units") (which Schedule includes the amount of the Lessor's Cost of each such Unit) have been delivered to the location indicated below, inspected by the Lessee, found to be in good order and accepted as Units of Leased Equipment under the Lease, all on the Date of Acceptance set forth below:

Location of Items of Equipment

Date of Acceptance

2. Representations by the Lessee

The Lessee hereby represents and warrants to the Lessor that on the date of Acceptance set forth above:

(1) The Lessee has satisfied or complied with all requirements set forth in any certificate of the Lessee and in the Lease to be satisfied or complied with on or prior to such Date of Acceptance.

(2) No Default or Event of Default under the Lease has occurred and is continuing on such Date of Acceptance.

(3) The Lessee has obtained, and there are in full force and effect, such insurance policies with respect to each of the Units as are required to be obtained under the terms of the Lease.

(4) Each of the Units was new and unused on the Date of Acceptance set forth above.

(5) There has been no material adverse change in Lessee's financial condition since September 30, 1980.

(6) Interstate Commerce Commission and Canadian Registrations have been made for each of the Units as provided in Section 15 of the Lease and evidence in form satisfactory to Lessor has been provided to Lessor.

3. Residual Value and Useful Life of the Items

Lessee is engaged in the railroad transportation industry and possesses sufficient experience and knowledge to express the opinion that:

(1) Based on normal usage and normal and proper maintenance, it could be expected that each of the Units will have a durability and useful economic life of not less than two years after the expiration of the ten year lease term provided in the Lease; and

(2) It is reasonable to expect that each of the Units will have a fair market value, net of extraction costs and before taking into account the effect of inflation or

deflation, of 20% or more of Lessor's Cost of such Unit at the expiration of the ten year lease term provided in the Lease, and that such Unit will be useful and useable to parties other than the Lessee or its affiliates at the expiration of such lease term.

4. Survival of Rights Against Vendor

Nothing contained in this Certificate of Acceptance No. _____ shall in any way diminish or otherwise affect any right the Lessee or Lessor may have with respect to the Units against the Vendor of any such Unit under the Purchase Letter or Purchase Letter Assignment relating to such Unit.

CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY as Lessee

By: _____

Title: _____

Accepted as of the Date of Acceptance
set forth in paragraph 1 above on behalf
of the Lessor: ITT INDUSTRIAL CREDIT COMPANY OF TENNESSEE
as Lessor

By: _____

Title: _____